



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Van Collision and Alteration, Inc.

Case No: DOT-20-0012

FINAL DECISION

On February 24, 2020, Justice Mann, filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Van Collision and Alteration, Inc., (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in The Daily Reporter, a newspaper published in Milwaukee, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by May 26, 2020. No additional claims were filed. Ms. Mann's claim was forwarded by the Department to the Division of Hearings and Appeals. On July 30, 2020 a Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(4)(a) was issued. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Justice Mann
502 E. Merrill Ave. #7
Fond du Lac WI 54935

Galina Shepshelevich
1767 Manchester Dr.
Grafton, WI 53024-2726

Van Collision and Alteration, Inc.
938 West National Ave.
Milwaukee WI 53204

The Ohio Casualty Insurance Company
9450 Seward Rd.
Fairfield OH 54014

Findings of Fact

1. Van Collision and Alteration Inc., (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities are located at 938 West National Avenue, Milwaukee, Wisconsin.

2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since July 20, 2016 (Bond # 601093581 from The Ohio Casualty Insurance Company).

3. On March 10, 2018, Justice Mann (Mann) purchased a 2008 Saturn Vue automobile, vehicle identification number 3GSL33P38S62046, from the Dealer. The vehicle was sold to Mann with various undisclosed defects that affected the operation and value of the vehicle.

4. On October 31, 2018, Mann filed an action against the Dealer in Fond du Lac County Circuit Court (Case Number 2018CV240). On February 21, 2020, the Fond du Lac County Circuit Court entered a judgment in favor of Mann against the Dealer and the principals of the Dealer. The judgment included a jury verdict that Mann sustained \$9,551.93 in actual damages as a result of deceptive and fraudulent actions by the Dealer, including the failure to disclose significant mechanical problems with the vehicle in violation Wis. Admin. Code § Trans 139.04(4).

5. On October 18, 2019, Mann filed a claim against the surety bond of the Dealer. The claim is in the amount of \$9,551.93, the amount of actual damages in the court judgment.

6. Mann's claim arose on March 10, 2018, the date she purchased the vehicle from the Dealer. Mann submitted documentation to support a claim in the amount of \$9,551.93. Mann filed a bond claim within three years of the ending date of the period the Ohio Casualty Insurance Company bond was in effect and it is, therefore, a timely claim.

Discussion

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

- (a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.
- (b) The claim arose during the period covered by the security.
- (c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the surety bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to Mann's claim, the Dealer's actions included a violation of Wis. Admin. Code § Trans 139.04(4). A violation of Wis. Admin. Code § Trans 139.04(4) is, in turn, a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale of a motor vehicle). Wis. Stat. §§ 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1 as a violation upon which a claim against a motor vehicle dealer's bond can be based. Mann sustained a loss as a result of this violation.

CONCLUSIONS OF LAW

1. Justice Mann's claim arose on March 10, 2018, the date she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Ohio Casualty Insurance Company covers a one-year period commencing on July 20, 2017. The claim arose during the period covered by the surety bond.
2. On February 24, 2020, Justice Mann filed a claim against the motor vehicle dealer bond of the Dealer. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.
3. Justice Mann's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Justice Mann has submitted documentation to support a claim in the amount of \$9,551.93. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable.
4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Justice Mann against the motor vehicle dealer bond of Van Collision and Alteration, Inc., is APPROVED in the amount of \$9,551.93. The Ohio Casualty Insurance Company shall pay Justice Mann this amount for her loss attributable to the actions of Van Collision and Alteration, Inc.

Dated at Madison, Wisconsin on September 8, 2020.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885



By: _____
Mark F. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4822 Madison Yards Way, Room S922
P.O. Box 7910
Madison, WI 53707-7910

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to ensure strict compliance with all its requirements.